



December 29, 1999

Mr. Eric Magee  
Legal and Compliance Division  
Texas Department of Insurance  
P.O. box 149104  
Austin, Texas 78714-9104

OR99-3807

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130754.

The Department of Insurance (the “department”) received a request for information regarding licensing to conduct utilization reviews for six named companies which are related under Merit Behavioral Care Corporation (collectively, “Merit”). You indicate that you have released some of the responsive information but seek to withhold screening criteria, claiming that this requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 4(i) of article 21.58A of the Insurance Code. You have supplied the subject information to this office for review. We have considered the exception you claim and reviewed the submitted information.

Section 4(i) of article 21.58A of the Insurance Code provides:

Each utilization review agent shall utilize written medically acceptable screening criteria and review procedures which are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, dentists, and other health care providers. Utilization review decisions shall be made in accordance with currently accepted medical or health care practices, taking into account special circumstances of each case that may require deviation from the norm stated in the screening criteria. Screening criteria must be objective, clinically valid, compatible with established principles of health care, and flexible enough to allow deviations from the norms when justified on a case-by-case basis. Screening criteria must be used to determine only

whether to approve the requested treatment. Denials must be referred to an appropriate physician, dentist, or other health care provider to determine medical necessity. *Such written screening criteria and review procedures shall be available for review and inspection to determine appropriateness and compliance as deemed necessary by the commissioner and copying as necessary for the commissioner to carry out his or her lawful duties under this code, provided, however, that any information obtained or acquired under the authority of this subsection and article is confidential and privileged and not subject to the open records law or subpoena except to the extent necessary for the commissioner to enforce this article.*

Ins. Code art. 21.58A § 4(i) (emphasis added).

In this case, the department argues that the submitted information is part of Merit's utilization review manual and is the type of information made confidential under Article 21.58A §4(i). We agree. After reviewing the submitted material and arguments, we find that the department must withhold the submitted material under section 552.101 of the Government Code in conjunction with section 4(i) of article 21.58A of the Insurance Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

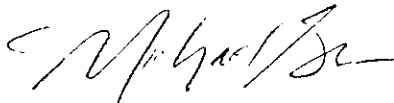
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should

report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/nc

Ref: ID# 130754

Encl: Submitted documents

cc: Ms. Susan U. Lauer  
Friedman, Houg, Suder & Cooke  
500 Throckmorton, 20<sup>th</sup> Floor  
Fort Worth, Texas 76102-  
(w/o enclosures)